

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1.
  - a. Whether there should be additional reimbursement for date of service 06/13/01.
  - b. The request was received on 06/05/02.

### **II. EXHIBITS**

1. Requestor:
  - a. Initial Submission of TWCC-60
    1. UB-92s
    2. EOBs
  - b. Additional medical records received on 07/23/02
    1. Position Statement
    2. Medical Records
    3. UB92s
    4. EOBs
    5. EOBs from other carriers
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Based on Commission Rule 133.307 (g) (4), the Division notified the insurance carrier Austin Representative of their copy of the request on 07/24/02. Respondent did not submit a response to the request. The "No Response Submitted" sheet is reflected in Exhibit II of the Commission's case file.
3. Notices of Medical Dispute is reflected as Exhibit III of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: Letter dated 07/22/02  
“(Requestor) charges the above-referenced services at a fair and reasonable rate. Specifically, these rates are based upon a comparison of charges to other Carriers and the amount of reimbursement received for these same or similar services. Based upon the requirements of Texas Administrative Code Section 130.304, a methodology may be developed to establish that a ‘fair and reasonable’ reimbursement amounts [sic] to ensure proper payment by Workers’ Compensation Carriers.”
2. Respondent: No response

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d)(1&2), the only date of service eligible for review is 06/13/01.
2. Per the initial TWCC 60, the provider billed a total of \$10,670.66.
3. Per the initial TWCC 60, the carrier reimbursed the provider \$1,993.01. The EOB in the provider's packet does not include a denial code, but in the provider's letters of 07/22/02 and 05/02/02, the provider accepts the denial as fair and reasonable. The dispute will be reviewed as a fair and reasonable dispute.
4. The amount in dispute per the initial TWCC-60 is \$5,838.65.

#### **V. RATIONALE**

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401(a)(4) states ASCs, "shall be reimbursed at a fair and reasonable rate..."

Section 413.011(b) of the Texas Labor Code states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable.

The initial bill submitted in dispute is broken down into operating room services, supplies, recovery charges, etc. The charges are for Ambulatory Surgery Center Facility Fees. The resubmitted bill bundles all the costs together and indicates total charges/facility fee. The provider's TWCC-60 separates the individual charges. However, the total is considered the facility charges (what the facility charged for providing the facility, equipment and supplies in order for the surgical procedure to be done.)

Because there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. Regardless of the carrier's application of its methodology, lack of methodology, or response, the burden is on the provider to show that the amount of reimbursement requested is fair and reasonable. In this case, the provider submitted EOBs from other carriers that indicate those carriers paid varying percentages of the billed charges. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is

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fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(b) of the Texas Labor Code. The provider's documentation fails to justify or demonstrate that the fees requested are fair and reasonable. Therefore, no further reimbursement is recommended.

The above Findings and Decision are hereby issued this 22nd day of August 2002.

Donna M. Myers, B.S.  
Medical Dispute Resolution Officer  
Medical Review Division

DMM/dmm

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.